DEC 15

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PUTNAM FABRICATING COMPANY
(a division of Union Boiler
Company), a corporation,
Petitioner,
vs.
ROGER NULL, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

QUESTION PRESENTED

Are employees who engaged in a work stoppage in violation of the collective bargaining agreement and who acted without the authorization of their union individually liable for damages sustained by their employer arising out of their breach of the collective bargaining agreement?

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*Respondents.***

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner, Putnam Fabricating Company (a division of Union Boiler Company), a corporation, respectfully prays that a writ of certiorari be issued to review the decision and opinion of the United States Court of Appeals for the Fourth Judicial Circuit entered in this proceeding September 26, 1980.

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*Petitioner was plaintiff in the District Court and Appellant in the Court of Appeals.

**Respondents are former employees of the petitioner and are all members of local union No. 667 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers. The following individuals constitute the Defendants in the District Court Action and the Appellees in the Court of Appeals: Roger Null, James Persinger, James McClung, Larry Moore, Joseph Cox, Larry Beller, Steve Shouldis, Harry Flinner, Earl Cunningham, Danny McKean, Robert Cook, Floyd Tillis, Russell Spaulding, Edward Oldham, Aubrey Asbury, Shawn Sayer and Charles Hall.

OPINIONS BELOW

The opinion of the Fourth Circuit is printed in the appendix at App. A., pp. 1a—5a. Although that decision is not yet published officially, it appears unofficially at 105 LRRM 2645. The order of the United States District Court for the Southern District of West Virginia dismissing the action in response to the defendants' Motion for Judgment on the pleadings and that Court's memorandum opinion are not reported, but are printed in the appendix as App. B. and App. C., pp.6a—10a.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on September 26, 1980. This petition is timely filed within 90 days of that date. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) (1948).

STATUTE INVOLVED

This case involves Section 301 of the Labor Management Relations Act, 61 Stat. 156, 29 U.S.C. § 185 (1947), printed in the appendix at App. D., p. 11a, (hereinafter "§ 301").

STATEMENT OF THE CASE

1. Jurisdiction

Putnam Fabricating Company (a division of Union Boiler Company), a corporation, petitioner (hereinafter the "Company"), originally brought this action in the United States District Court for the Southern District of West Virginia against the respondents (hereinafter the "employees") pursuant to § 301. Each of these respondents was a Company employee. The action in the lower Court sought injunctive relief and monetary damages resulting from the employees' unauthorized participation in a "wildcat" strike in violation of the express no-strike provision of the collective bargaining agreement.

2. Statement of Facts

The Company and Local Union No. 667 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (hereinafter the "Union"), are parties to a collective bargaining agreement entitled "Agreement of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers Between Putnam Fabricating Company, Bancroft, West Virginia, and Local No. 667 Charleston, West Virginia." This contract was in full force and effect on June 8, 1977, and at all times material to this case. Article 16 of the contract contains a no-strike provision[1] and Article 25 provides the grievance procedures to be followed by employees for all disputes between the parties.

On June 8, 1977, some of the Company's employees (the respondents herein) who were assigned to the night shift ceased the scheduled work which was in progress that evening, left the plant and refused to return to work. No attempt was made by the employees to submit their grievance to the procedures outlined in the contract. The Union steward on that shift did not instigate, encourage or condone the work stoppage by those employees, nor did he participate with the employees in the picket line which they then initiated at the Company's plant, closing its business. When the employees refused to return to work, they were discharged. The Union officials attempted to disperse the pickets even to the extent of having their attorney talk with them at the picket line. All efforts to dissuade the strikers were to no avail.

1Art. 16—Cessation of work—lock out:

"Section 1. During the life of this agreement, neither local union No. 667 nor the International Union will authorize or ratify a strike, work slowdown or work stoppage except because of a violation of this agreement by the employer, and then only by a vote of the employees involved in strict compliance with Article XVI of the International Constitution.

Section 2. Any employee entering into an unauthorized or unratified work stoppage will be discharged and not subject to the grievance procedure provided for herein."

3. Proceedings Below—The District Court

On June 9, 1977, the Company filed a complaint in the United States District Court for the Southern District of West Virginia requesting injunctive relief and damages against the employees pursuant to § 301 of the LMRA. The Union was not named as a defendant in that complaint. That same day the Company appeared before the district court and requested a temporary restraining order. The motion was granted.

On June 29, 1978, the Company filed its Motion For Summary Judgment. A hearing was held before the district court on July 14, 1978, on that motion and the employees tendered their Motion for Judgment On The Pleadings at that time.

On March 9, 1979, the district court issued its order and memorandum opinion dismissing action with prejudice. In its memorandum opinion the court held that the damage action could not be maintained against the individual employees by the Company under § 301.

—The Appellate Court

On appeal, the Court of Appeals for the Fourth Circuit on September 26, 1980, affirmed the judgment of the district court. The appellate court relied upon the holdings of the Sixth Circuit in *Complete Auto Transit, Inc., v. Reis*, 614 F.2d 1110 (6th Cir. 1980), and the Seventh Circuit in *Sinclair Oil Corp. v. Oil, Chemical & Atomic Workers Int'l Union*, 452 F.2d 49 (7th Cir. 1971).

On October 14, 1980, this Court granted a writ of certiorari to the petitioner in *Complete Auto Transit, Inc., v. Reis*, 79—1777.

REASONS FOR GRANTING THE WRIT

I. THE ISSUE PRESENTED IN THIS CASE IS EXACTLY THE SAME ISSUE PRESENTED TO THIS COURT IN *COMPLETE AUTO TRANSIT, INC. V. REIS.*

The petitioner in *Complete Auto Transit* was granted a writ of certiorari by this Court on October 14, 1980. In that case, the petitioners presented to this Court exactly the same issue presented in this case. The facts are also quite similar. The petitioner's original action in that case sought injunctive relief as wdll as relief for damages suffered by employers when their employees engaged in an unauthorized work stoppage. The agreement contained both a no-strike provision and a provision which required the submission of all disputes to the grievance procedure.

The district court granted the employees' motion to dismiss and held that the employees could not be sued for monetary relief in their individual capacities under § 301, relying upon the reasoning found in *Sinclair Oil Corp. v. Oil, Chemical and Atomic Workers Int'l. Union, supra.* On appeal, the Court of Appeals for the Sixth Circuit affirmed the judgment of the district court.

Because of the similarity of facts, issues and questions of law presented in the *Complete Auto Transit* case and this case, this court should grant a writ of certiorari to this petitioner as well.

II. THE DECISIONS OF THE COURTS OF APPEALS MISINTERPRET THE LEGISLATIVE HISTORY OF SECTION 301 WHICH EVIDENCES A CONGRESSIONAL INTENTION TO ALLOW A DAMAGE REMEDY FOR UNAUTHORIZED INDIVIDUAL BREACHES OF A NO-STRIKE PROVISION.

The decision of the Fourth Circuit in this case as well as those of the Seventh Circuit in *Sinclair Oil*, and the Sixth Circuit in *Complete Auto Transit*, do not correctly interpret the Congressional intent in enacting § 301. The circuit courts' holdings stand for the proposition that the legislative

history of § 301 only reflects a desire by Congress to exempt labor union members from their legal and contractual responsibilities. In the committee hearings and in the Senate and House debates which proceeded passage of § 301, the prevalent concern was the legal status of labor unions. Prior to 1947, unions were unincorporated associations and their ability to be held responsible for acts or agreements as associations varied depending on the laws of the state in which they were located.

In those hearings, the references to the "Danbury Hatters" case [*Loewe v. Lawlor*, 208 U.S. 274 (1908)] were made to illustrate the need for a corporate-like status for labor unions. Congress found that union members were being caused to bear personally the responsibility not only for their own individual actions, but also for the collective actions of their labor unions. In passing the Taft-Hartley Act, Congress sought to limit the responsibility for a union's actions to the union's assets in a stockholder/corporate type structure.[2]

Congress clearly insulated the union's membership from liability in § 301(b). However, an examination of the entire bill shows that Congress meant to preserve all remedies already available against unions or individuals depending upon where the blame for strikes belonged.

> "What good is a collective-bargaining agreement if people are not bound by it? If there is a collective-bargaining agreement and the men are bound by it, they ought to carry it out. If the union

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[2]In the senate debates, Senator Taft addressed this issue squarely.

"Mr. President, Title III of the bill, on page 53, makes unions suffer in the Federal Courts for violation of a contract. As a matter of law unions, of course are liable in theory on their contracts today, but as a practical matter it is difficult to sue them. They are not incorporated; they have many members; in some States all the members must be sued; it is difficult to know who is to be sued. *But the pending bill promises they can be sued as if they were corporations* and if a judgment is found against the labor organization, even though it is an unincorporated association, the liability is on the labor union and the labor union funds, and it is not on the individual members of the union, where it has fallen in some famous cases to the great financial distress of the individual members of the labor unions." [emphasis added] 93 Cong.Rec. 3839 (1947).

> wants to carry it out, and some of the men say, 'we will not do it', they ought to be liable. This provision applies only if the action of the individual is a violation of the collective-bargaining agreement." 93 Cong. Rec. at 5706 (1947); remarks of Senator Taft.

Plainly, the language of § 301(a) does not say that only employers and labor organizations may be parties to actions brought under that section. So long as the action alleges a violation of a contract between an employer and a labor organization, the identity of the parties is incidental.

> "An employer is liable for his contracts and should be, and, by the same token, so should the employee." 92 Cong. Rec. at 5942 (1947); remarks of Representative Slaughter.

To read the statutory language of § 301 otherwise is to give the law a one-sided limitation that collective bargaining agreements may be enforced by, but not against, individual employees. To so find is to thwart the Congressional design of promoting industrial peace by providing equal responsibility upon all parties affected by a contract. The passage of the Act evidenced the two desires of Congress: that unions and employees will be held accountable for irresponsible behavior which violates the agreements and that individuals should be held harmless for the activities authorized by their unions.

III. THE ISSUE PRESENTED IN THIS CASE HAS NEVER BEEN ADDRESSED BY THIS COURT.

This Court has never decided a case of like facts, but did specifically reserve the instant question in *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962), at 249, fn. 7.[3] A survey of the leading cases decided by this Court under § 301 shows that the Act has been broadly applied in the enforcement of collective bargaining agreements, and proves that the judicial policy established in *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448

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[3][W]e therefore do not reach the question of whether the count would state a proper §301 (a) claim if it charged unauthorized, individual action.

(1957), of promulgating a common law relating to labor questions is a viable approach. In the *Lincoln Mills* case, this Court held that a narrow reading of § 301 would defeat the express objective of the Act of reducing the large number of strikes in this Country, and redressing a bargaining-power imbalance in favor of the unions which was seen to have been created by the National Labor Relations Act. That conclusion was rendered after an in-depth study of the Congressional Record found in the opinion's sixty-one page appendix.

Based upon the *Lincoln Mills* rationale, it is incumbent upon the federal courts to fashion a remedy that will effectuate the policy of creating sanctions where the statutes are found lacking in express language. "The range of judicial inventiveness will be determined by the nature of the problem." 353 U.S. at 457.

After *Lincoln Mills*, this Court has never hesitated to apply § 301 to allow suits by employees against their employers, even though the express statutory language does not grant that jurisdiction.[4] In *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U.S. 235 (1970), this Court recognized an employer's right to enjoin unions' strike actions which violate a no-strike provision, thus adding a broader interpretation which was an exception to the Norris-LaGuardia Act.[5]

The next logical step to be taken, and the path which the petitioner urges for the Court, is the continuation of broad and even-handed enforcement of § 301 by holding that individuals must also be bound by their agreement and held liable to their employer for the damages which result from their irresponsible and unauthorized breaches of a contract.

This result is clearly necessitated in light of this Court's decision in *Carbon Fuel Company v. United Mine Workers of America*, —U.S.—, 100 S. Ct. 410 (1979). In that case, the unions successfully argued that a union can be held liable

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[4]*Smith v. Evening News Association*, 371 U.S. 195 (1962); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976).

[5]29 U.S.C §§ 101—15 (1932).

for the damages resulting to employers from wildcat strikes only when it can be found to be responsible for that strike under a showing of "legal proof of Agency," 100 S. Ct. at 413. In the instant case, the legal proof of agency is absent. Here the Union went to extremes not normally taken to attempt to dissuade its members from picketing their employer's business. Therefore, it is obvious that the individuals proceeded with their activities in total disregard of the provisions of the contract, the demands of their Union and employer to the contrary notwithstanding.

IV. THE PUBLIC INTEREST OF UNINTERRUPTED INDUSTRIAL OPERATION DURING THE TERMS OF CONTRACTS WOULD BEST BE SERVED BY FASHIONING A DAMAGE REMEDY FOR EMPLOYERS.

Employees derive benefit from contracts in the obvious form of wages, hours and working conditions to which they must agree before ratification of the agreement. In addition, they receive the due process protection afforded by the grievance machinery of the agreement. As a quid pro quo, they agree not to engage in unauthorized work stoppages during the term of the agreement. Thus, the employer receives the benefit of the promise of uninterrupted production time. During the agreement, a company has the right to expect that there will be **no** unexpected and costly strikes. When individual employees strike with impunity, the employer loses valuable production time and profits. More importantly, however, the bargaining process is undermined.

The enactment of § 301 gave to employers hope of a practical vehicle to enforce their contracts, but the subsequent interpretation placed upon that section by three of the circuit courts of appeals returns employers to their pre-Taft-Hartley status. The employees receive the benefits of the bargain, but are placed under no legal obligation to honor the contract. The promise not to strike in any contract is of no value unless it is binding upon the parties—the

employees themselves—who can physically man a picket line.

The realization by employees that their individual breaches of a contract may give rise to individual damage suits would deter them from striking without union authorization, encourage the national labor policy of encouraging peaceful settlement of labor disputes, and thus promote the public's interest in nationwide industrial peace during the term of a collective bargaining agreement.

Allowing employees to disregard the clear language of contracts prohibiting strikes and exempting them from suits brought for damages eviscerates the contractual agreement and renders it an anomaly. Calling employees to task for their contractual duties will "promote a high degree of responsibility upon the parties to such agreements and will thereby promote industrial peace." S. Rep. No. 105, 80th Cong., 1st Sess., p. 17 (1947). A solution is badly needed in view of the continued use by individuals of the wildcat strike to modify contracts after ratification.

CONCLUSION

For the above-stated reasons, the petitioner respectfully requests this court to issue a Writ of Certiorari.

Respectfully submitted,

PUTNAM FABRICATING COMPANY
(a division of Union Boiler Company)

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79—1275

PUTNAM FABRICATING COMPANY,
Appellant.

vs.

ROGER NULL, JAMES PERSINGER,
JAMES McCLUNG, LARRY MOORE,
JOSEPH COX, LARRY BELLER,
STEVE SHOULDIS, HARRY FLINNER,
EARL CUNNINGHAM, DANNY McKEAN,
ROBERT COOK, FLOYD TILLIS,
RUSSELL SPAULDING, EDWARD OLDHAM,
AUBREY ASBURY, SHAWN SAYER,
CHARLES HALL,
Appellees.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Dennis R. Knapp, Chief Judge.

Argued: August 12, 1980 Decided: September 26, 1980

Before FIELD, Senior Circuit Judge, and HALL and SPROUSE, Circuit Judges.

Sarah E. Smith, Ricklin Brown (Bowles, McDavid, Graff and Love on brief) for Appellant; James M. Haviland (James B. McIntyre, McIntyre, Haviland & Jordan on brief) for Appellees.

FIELD, Senior Circuit Judge:

Presented for our determination in this case is the question whether an employer, pursuant to Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185,[1] may recover damages from individual union members for an unauthorized and unratified breach of the no-strike provision of a collective bargaining agreement. On June 8, 1977, the seventeen defendants, all members of Local Union 687, International Brotherhood of Boilermakers, Iron Ship

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[1]29 U.S.C. § 185 reads, in pertinent part, as follows:

§ 185. *Suits by and against labor organizations*
Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent;
entity for purposes of suit;
enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

* * * *

Determination of question of agency

(e) For the purpose of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Builders, Blacksmiths, Forgers and Helpers (Union) and employees of Putnam Fabricating Company (Company), walked off the job in violation of the no-strike provision of the collective bargaining agreement between the Company and the Union. Since the work stoppage was neither authorized nor ratified by the Union, the defendants were discharged by the Company pursuant to the collective bargaining agreement.[2] Thereafter, a picket line was set up and the Company was shut down. In response, the Company filed suit in the district court against the employees, seeking both injunctive relief and damages. The district court issued a temporary restraining order but subsequently denied the Company's motion for a preliminary injunction. In addition, the court dismissed the Company's claim for damages and from this latter order the Company appeals. We affirm.

Although the question presented is one of first impression for us, both the Seventh and Sixth Circuits have had occasion to consider the issue.[3] In *Sinclair Oil Corp. v. Oil, Chemical and Atomic Workers International Union*, 452 F.2d 49 (7 Cir. 1971), the employer sought damages under Section 301 from individual employees who, in defiance of their union, refused to cross a picket line maintained by fellow union members of another bargaining unit. In dismissing the employer's claim, the Seventh Circuit looked to both the language and legislative history of Section 301. The court noted that Section 301(b) expressly prohibits enforcement against individual union members of judgments obtained against the union and that:

> [t]he legislative history of the Act indicates that the principal concern of Congress was with making unions, as parties to collective bargaining agreements, responsible for breaches of agreements and to avoid subjecting individual union members to fiscal ruin

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[2]It is undisputed that the Union is without liability in regard to the work stoppage.

[3]This issue was expressly reserved by the Supreme Court in *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 249, n.7 (1962).

> that was visited upon members as a result of the "Danbury Hatters" decision.[4]

452. F.2d at 52. Further, the court pointed out that the employer is not without remedy for it may discharge or discipline the individual union members who violate the collective bargaining agreement. The court concluded, therefore, that "when Section 301 was enacted [Congress] had no intention of subjecting union members engaged in wildcat strikes to individual liability for damages." 452 F.2d at 54.

The same conclusion was reached by the Sixth Circuit in *Complete Auto Transit, Inc. v. Reis*, 614 F.2d 1110 (6 Cir. 1980). In *Reis* the employer sought damages from individual employees who had gone on strike claiming their union was not representing them properly in current negotiations. Agreeing with the Seventh Circuit, the court concluded that there is no indication that Congress intended to create a cause of action for damages against individual union members for breach of a no-strike agreement. 614 F.2d at 1116.

We, too, find the Seventh Circuit's analysis in *Sinclair Oil* persuasive. In passing Section 301(b) Congress was obviously concerned with the "fiscal ruin visited upon [union] members as a result of the "Danbury Hatters" decision." *Sinclair Oil v. Oil, Chemical and Atomic Workers Union*, 452 F.2d 40, 52 (7 Cir. 1971). [sic] In the light of such Congressional concern, it would be anomalous to extend Section 301 to permit damage suits by employers against individual union members for breaches of a collective bargaining agreement.[5] There is simply no authority in the

[4]In the "Danbury Hatters" decision (*Loewe v. Lawlor*, 208 U.S. 274 (1907); *Lawlor v. Loewe*, 235 U.S. 522 (1915); *Loewe v. Bank of Danbury*, 236 F. 444 (2 Cir. 1916)), a large money judgment was entered against several union members individually in an antitrust action and their personal assets were used to satisfy the judgment resulting in financial ruin for many.

[5]As noted in Sinclair Oil, 452 F.2d at 52, Congress was apparently interested in making unions responsible for breaches of collective bargaining agreements. For example, Section 301(b) mandates that unions will be bound by the acts of their agents and under Section 301(e) in determining whether a person is acting as an "agent" the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling. This is somewhat indicative that Congress was trying to insulate the individual union members and hold the union responsible.

legislative history for a contrary conclusion. Finally, we are influenced by the fact that in some nine years since the Seventh Circuit decided *Sinclair Oil*, Congress has not seen fit to take any action to alter the result in that case. Accordingly, we hold that Section 301 does not create a cause of action for damages by an employer against individual union members for such an unauthorized breach of the collective bargaining agreement.[6]

AFFIRMED

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[6]We recognize that some district courts have reached a contrary conclusion. *E.g. New York State United Teachers v. Thompson*, 459 F. Supp. 677 (N.D. N.Y. 1978); *Alloy Cast Steel Corp. v. United Steel Workers*, 429 F. Supp. 445 (N.D. Ohio 1977). However, we do not find them persuasive. *See Complete Auto Transit, Inc. v. Reis*, 614 F.2d 1110, 1115—16 (6 Cir. 1980).

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

PUTNAM FABRICATING COMPANY,
Plaintiff,
vs. Civil Action No. 77-2277-CH,
ROGER NULL, et als.,
Defendants.

ORDER

This action came on for hearing before the Court and the issues having been duly heard and a decision having been duly rendered in accordance with this Court's Memorandum Opinion of even date herewith, which is ORDERED filed and made a part of the record herein, it is ORDERED and ADJUDGED that this action be, and the same is, hereby dismissed with prejudice and stricken from the docket of this Court.

The Clerk is directed to mail certified copies of this Order and the Court's Memorandum Opinion to counsel of record herein.

ENTER: March 9, 1979
DENNIS R. KNAPP, Chief
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
OF WEST VIRGINIA SOUTHERN DISTRICT
CHARLESTON

PUTNAM FABRICATING COMPANY,
Plaintiff,
vs. Civil Action No. 77-2277-CH,
ROGER NULL, et als.,
Defendants.

MEMORANDUM OPINION

The issue in this case is whether an employer may maintain an action for damages under the provisions of Section 301 of the Labor-Management Relations Act,[1] 29 U.S.C. §185, solely against employee union members where such employees engaged in an unauthorized strike which resulted in work stoppages at the employer's plant.

On June 8, 1977, defendants, then employees of plaintiff and members of Local Union No. 667, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, walked off the job at plaintiff's plant in Bancroft, West Virginia. Plaintiff demanded that defendants return to work but each refused. The parties agree that Local No. 667 neither authorized nor ratified the walkout.

Article 16 of the Collective Bargaining Agreement between the union and plaintiff authorizes discharge of any employee entering into a work stoppage unauthorized or unratified by the union. Pursuant to those provisions, plaintiff exercised that right and discharged all of the defendants. A picket line was then formed, which resulted in the closing of plaintiff's plant, causing economic loss to the plaintiff. This action followed.

Section 301(b) of the Labor-Management Relations Act reads in pertinent part:

> ". . . any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

Plaintiff contends that an individual employee is insulated from personal liability only in a case where an action is brought against both the employee and his union, *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962), or against an employee where his union was at least arguably liable. *Williams v. Pacific Maritime Assoc.*, 421 F.2d 1287

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[1]Often referred to as the "Taft-Hartley Act."

(9th Cir. 1970). Plaintiff therefore contends that Section 301(b) furnishes the substantive vehicle which allows a cause of action for damages to be maintained against an employee under the circumstances hereinbefore set forth.

It is axiomatic that Section 301(b) should be read in a way so as not to defeat its Congressional aim. See, *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957).

> "The Labor-Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. *Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy.* The range of judicial inventiveness will be determined by the nature of the problem. [Emphasis supplied]. 353 U.S. at 457.

It is without question that the instant cause of action is without the "express statutory sanction" of Section 301. It is therefore necessary to look to the "policy of the legislation" in order to determine the outcome of the issue at bar.

The question thus becomes what was the purpose behind enactment of Section 301, and particularly the quoted portion of Section 301(b).

The "Danbury Hatters" case, *Loewe v. Lawlor*, 208 U.S. 274 (1908), was the ontogeny of Section 301(b). In that case the company was awarded judgment against both the individual members of the union and the union itself. Because the union was insolvent, execution was made upon the personal assets of the members in satisfaction of the judgment. Referring to the end result of "Danbury Hatters," Senator Taft, one of the sponsors of the Labor-Management Relations Act, stated: "[w]e do not want to perpetrate such a condition." 92 Cong. Rec. 5705 (1946).

The Seventh Circuit squarely faced the issue at bar in *Sinclair Oil Corp. v. Oil, Chemical and Atomic Workers Int. Union*, 542 F.2d 49 (7th Cir. 1970). Basing its decision regarding the issue at hand on the inescapable conclusion

that Congress did not intend for such an action to lie as is pleaded in plaintiff's complaint.

To permit plaintiff's cause of action to stand would be allowing plaintiff to do indirectly what the Act directly forbids. More to the point, the bottom line of Section 301(b) is to insulate employees from having to be liable in damages for their unauthorized activity. It is illogical to say that under Section 301 an employer may not collect damages from an employee when the employee and the union are both defendants but may collect damages when only the employee is sued.

Plaintiff relies on two district court cases which have addressed themselves to the instant issue. *Alloy Cast Steel Co. v. United Steelworkers of America*, 429 F.Supp. 445 (N.D. Ohio 1976), and *New York State United Teachers v. Thompson*, 459 F.Supp. 677 (N.D.N.Y. 1978), hold that a damage suit may be maintained solely against individual employees under the provisions of Section 301.

The district court in *Alloy Cast Steel* based its decision for the most part on the case of *DuQuoin Packing Co. v. Meat Cutters Local P-156*, (N.D.Ill. 1971), [sic] which held individual members could be subject to a money damage claim. However, the *DuQuoin Packing* district court is within the Seventh Circuit and *Sinclair Oil* was decided nearly ten months after *DuQuoin Packing*, leaving little doubt that DuQuoin Packing has been, at least impliedly, disapproved.

Relying heavily on *Alloy Cast Steel* the district court in *New York State Teachers* also answered the issue at bar in the affirmative. It pointed out—as does the plaintiff herein—that the Supreme Court has specifically reserved this question. See, *Smith v. Evening News Assoc.*, 371 U.S. 195, 199-200 (1962). While this is true, that fact could hardly be used as precedent to support plaintiff's argument.

The germane portions of the legislative history of Section 301 are set forth in both *Textile Workers* and *Sinclair Oil*.

From a plain reading of those portions, it is abundantly clear that the aim of Congress was to prevent another "Danbury Hatters" from occurring.

This Court's decision that this action may not be maintained against the defendants individually does not leave the plaintiff—or any other employer—without a remedy for any wrong suffered by reason of wildcat strikes. The remedy so afforded is that of the right to discharge a culpable employee.

> "But there is another more formidable argument against individual liability apart from congressional intent in relations [sic] to section 301. Sections 7 and 8 regulate wildcat strikes on the assumption that the severest penalty inflicted upon an unprotected employee is discharge. Since the question of whether an employee may be discharged or replaced is central to the scheme of protected and unprotected activity, a damage suit against workers would be inconsistent with federal law because the Act assumes that discharge is the ultimate penalty.[2]

In view of the foregoing, the stated issue is answered in the negative.

Judgement in accordance with this opinion will be entered.

DATED: March 9, 1979
DENNIS R. KNAPP, Chief
United States District Judge

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[2]Gould, "The Status of Unauthorized and 'Wildcat' Strikes Under the National Labor Relations Act," 52 Cornell L. Rev. 672, 704 (1967).

APPENDIX D

SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisidiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgements

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capactiy as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.